

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**JNC CONSTRUCTION, INC.**

**and**

**Cases 13-CA-137507**

**ALEX BUSTILLO**

**and**

**13-CA-137560**

**JUAN CARLOS MUNOZ**

**and**

**13-CA-137561**

**RAFAEL MUNOZ**

**and**

**13-CA-140082**

**13-CA-143518**

**ROGER ESCOBAR**

**DECISION AND ORDER**

Statement of the Cases

On May 15, 2015, JNC Construction, Inc. (the Respondent), the Charging Parties, and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

**Findings of Fact**

## 1. The Respondent's business

At all material times, JNC Construction, Inc. (the Respondent), with an office and place of business in Lockport, Illinois (the Respondent's facility), has been engaged in the removal and installation of roadway sewer caps.

During the past calendar year, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for various municipalities within the State of Illinois, which are enterprises directly engaged in interstate commerce and meet the Board's direct inflow and outflow standards.

## 2. The labor organization involved

At all material times, Laborers Local 76 has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Laborers Local 582 has been a labor organization within the meaning of Section 2(5) of the Act.

Collectively, Local 76 and Local 582 are referred to as "the Union."

## **ORDER**

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, JNC Construction, Inc., Lockport, Illinois, shall

### 1. Cease and desist from

(a) Making it appear to employees that it is watching out for their union activities.

(b) Asking employees about employee support for a union.

(c) Instructing employees to take photographs of union representatives present on job sites or otherwise instruct employees to report the presence of union representatives on job sites.

(d) Interfering with employees' rights to communicate with union agents by requiring employees to move from one job site location to another because union agents are present on a job site.

(e) Threatening employees with subcontracting work, closure of the facility, discharge, or loss of benefits if they choose to be represented by or support a union or engage in activity with other employees regarding wages, hours, and working conditions.

(f) Retaliating against employees because of their support for and activities on behalf of a union by threatening to report employees to federal immigration authorities or local police departments.

(g) Firing employees because they exercise their right to discuss wages, hours, and working conditions with other employees or because of their union membership or support.

(h) In any other manner, interfering with employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the following employees for any loss of pay they may have suffered by reason of the alleged discrimination against them, by payment to them in the amounts set forth opposite their names:

<b>Alex Bustillo</b>	<b>\$4,256.00</b>
<b>Compounded Interest, as of the date of settlement</b>	<b>\$81.00</b>
<b>Excess Tax Liability</b>	<b><u>\$13.00</u></b>
<b>Total for Alex Bustillo</b>	<b>\$4,350.00</b>

<b>Juan Carlos Munoz</b>	<b>\$3,952.00</b>
<b>Compounded Interest, as of the date of settlement</b>	<b>\$75.00</b>
<b>Excess Tax Liability</b>	<b><u>\$12.00</u></b>
<b>Total for JC Munoz</b>	<b>\$4,039.00</b>

<b>Rafael Munoz</b>	<b>\$3,952.00</b>
<b>Compounded Interest, as of the date of settlement</b>	<b>\$75.00</b>
<b>Excess Tax Liability</b>	<b><u>\$12.00</u></b>
<b>Total for Rafael Munoz</b>	<b>\$4039.00</b>

<b>Roger Escobar</b>	<b>\$3,952.00</b>
<b>Compounded Interest, as of the date of settlement</b>	<b>\$75.00</b>
<b>Excess Tax Liability</b>	<b><u>\$12.00</u></b>
<b>Total for Roger Escobar</b>	<b>\$4039.00</b>

The Respondent will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay. The Respondent will also file a report with the Social Security Administration allocating the payment(s) to the appropriate time periods.

The Respondent is also responsible for additional payments to reimburse the discriminatees for amounts equal to the difference in taxes owed by them upon receipt

of lump sum backpay payments and the taxes which would have been owed by them if there had been no discrimination.

The Respondent is also required to submit the appropriate documentation to the Social Security Administration as set forth in IRS Publication 975 so when backpay is paid to the discriminatees, it will be allocated to the appropriate calendar quarters.

The Respondent stipulates herein that the calculated amounts for backpay, interest, and/or excess tax liability to remedy the violations of the Act will not be contested in any court proceeding, bankruptcy proceeding, or in any other forum.

The Respondent has represented to the Region/Board that it has ceased operations and ceased doing business and has insufficient funds to meet its affirmative obligations under this agreement; however, the Region/Board does not accept this assertion as a legal conclusion and will continue to pursue all avenues necessary to ascertain compliance with this Formal Settlement Agreement.

(b) Remove from its files any/all references to the discharges of Alex Bustillo, Juan Carlos Munoz, Rafael Munoz, and Roger Escobar, and notify them in writing that the Respondent has done so and that the discharges will not be used against them in any way.

(c) Within 14 days of service by the Region, mail copies of the attached notice marked as "Exhibit 9," in English and Spanish, to all employees of the Respondent who were employed by the Respondent at any time as of May 1, 2014. The Respondent will provide the Regional Director, through the Region's Compliance Officer Tom Porter at [Thomas.porter@nlrb.gov](mailto:Thomas.porter@nlrb.gov), written confirmation of the date of mailing and a list of names and addresses of employees to whom the Notices were mailed. Notices will be signed by a responsible official of the Respondent.

(d) Notify the Regional Director for Region 13, in writing, within 21 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C., July 24, 2015

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Kent Y. Hirozawa, Member

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Harry I. Johnson, III, Member

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Lauren McFerran, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

## **EXHIBIT 9**

### **NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government**

#### **PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS**

#### **FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union;  
Choose a representative to bargain with us on your behalf;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** make it appear to you that we are watching out for your union activities.

**WE WILL NOT** ask you about employee support for a union.

**WE WILL NOT** instruct employees to take photographs of union representatives present on job sites or otherwise instruct employees to report the presence of union representatives on job sites.

**WE WILL NOT** interfere with employees' rights to communicate with union agents by requiring employees to move from one job site location to another because union agents are present on a job site.

**WE WILL NOT** threaten you with subcontracting work, closure of the facility, discharge, or loss of benefits if you choose to be represented by or support a union or engage in activity with other employees regarding your wages, hours, and working conditions.

**WE WILL NOT** retaliate against employees because of their support for and activities on behalf of a union by threatening to and withholding their paychecks.

**WE WILL NOT** retaliate against employees because of their support for and activities on behalf of a union by threatening to report employees to federal immigration authorities or local police departments.

**WE WILL NOT** fire employees because they exercise their right to discuss wages, hours, and working conditions with other employees or because of their union membership or support.

**WE WILL NOT** in any other manner interfere with your rights under Section 7 of the Act.

**WE WILL** pay Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz for the wages they lost because we fired them.

**WE WILL** remove from our files all references to the discharges of Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz, and **WE WILL** notify them in writing that this has been done and that the discharges will not be used against them in any way.

**WE WILL** compensate Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1 year.

**WE WILL** file reports with the Social Security Administration allocating backpay for Roger Escobar, Alex Bustillo, Juan Carlos Munoz, and Rafael Munoz to the appropriate quarters.

#### **JNC CONSTRUCTION, INC.**

The Board's decision can be found at [www.nlrb.gov/case/13-CA-137507](http://www.nlrb.gov/case/13-CA-137507) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

